NO. 42369-3-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

STANLEY CURTIS JUVE,

Appellant.

BRIEF OF RESPONDENT

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A. ANSWERS TO ASSIGNMENTS OF ERROR

1. The warrant to search Mr. Juve's residence was supported by probable cause.

2. Evidence seized pursuant to the valid warrant was properly deemed admissible.

B. STATEMENT OF THE CASE

1) Procedural History

Stanley Juve was arrested on January 4, 2011. On January 7, 2011, the Cowlitz County Prosecuting Attorney charged Mr. Juve with one count of Felony Harassment based on his threats to kill. CP 1-2; RCW 9A.46.020. On January 18, 2011, Officer Scott McDaniel filed an affidavit for a search warrant in the Cowlitz County District Court. CP 12-15. Pursuant to evidence recovered from the search warrant executed at Mr. Juve's home, on January 25, 2011, the State moved to amend the information to add six counts of Unlawful Possession of a Firearm in the Second Degree. 1RP 112-13; CP 3-7; RCW 9.41.040(2)(a). At the time the search warrant was executed, Mr. Juve was incarcerated and had been since the time of his arrest. CP 20; CP 10. Mr. Juve made a motion suppress the evidence gained as a result of the search warrant. CP 8-15. That motion was denied on April 28, 2011, by The Honorable James

Stonier. 1RP 12-14. The case went to trial on June 1, 2011, and a jury returned verdicts of guilty on the crimes charged. 1RP 15, CP 85-91. Mr. Juve was sentenced and then filed a timely notice of appeal. CP 97, 104.

2) Statement of Facts[1]

On January 3, 2011, Officer Scott McDaniel of the Longview Police Department was notified by the Cowlitz County dispatch center that Stanley Juve had called an IRS office and threatened to go the Red Canoe Credit Union "to shoot them." CP 12. Officer McDaniel called and interviewed the IRS agent who had spoken with Mr. Juve. CP 13. Her conversation with Mr. Juve had been recorded. *Id.* She informed Officer McDaniel that Mr. Juve demanded from her immediate results on all issues that he was complaining about and that if he did not get what he wanted he would go to the bank to get his money. *Id.* Shortly after telling her this, Mr. Juve said that he would begin shooting people in the bank and informed the IRS agent that he was armed with a rifle. *Id.* Next, Mr. Juve informed the agent to listen because he wanted her to hear the rifle. Finally, Mr. Juve instructed the agent that he wanted $8,000 wired into

[1] Because this appeal focuses on the probable cause determination for the purposes of supporting the search warrant the facts contained in the search warrant affidavit are more relevant than the actual trial testimony.

his account at the Red Canoe Credit Union by 1300 hours and if the money was not in his account by that time he would begin shooting people there. *Id.*

Based on this information, Longview police officers began searching for Mr. Juve. CP 13. While this search was ongoing, two clerks working at an AM/PM called 911 to report that Mr. Juve had just been at their store, was angry, and stating that he "was going to shoot up the Red Canoe Credit Union." *Id.* Shortly thereafter, Mr. Juve was spotted, and then interviewed by Officer McDaniel.

Later, Officer McDaniel proceeded with his investigation by going to the Red Canoe Credit Union. *Id.* There, he spoke with a bank teller who was a witness to Mr. Juve's threats. *Id.* She stated that Mr. Juve came into the credit union at approximately 1110 hours. *Id.* The teller explained to Officer McDaniel that Mr. Juve was frustrated and blamed the Red Canoe Credit Union because he had not received the money to which he believed he was entitled. CP 13. After expressing his frustration, Mr. Juve informed the bank teller that he owned a gun and planned to bring it into the credit union to shoot all of the employees. *Id.* He repeated that he was going to kill the employees at the credit union and

that he had enough bullets to do it. *Id.* at 13-14. Mr. Juve also told the teller that earlier while he was speaking with someone on the phone that he had cocked his weapon. CP 14.

The next day, January 4, 2011, Mr. Juve was arrested at his home. *Id.* He stated to officers at this time that he had purchased his house and was upset because the IRS had failed to pay him the $8,000 credit he was due as a first-time home buyer. *Id.*

C. ARGUMENT

THE JUDGE PROPERLY ISSUED A SEARCH WARRNT TO SEARCH MR. JUVE'S HOME BECAUSE PROBABLE CAUSE EXISTED TO BELIEVE EVIDENCE OF HIS CRIMES WOULD BE FOUND THERE.

Under both the Constitution of the United States and Washington's Constitution, a search warrant may issue only upon a determination of probable cause. *State v. Thein*, 138 Wn.2d 133, 140, 977 P.2d 582 (1999). "Probable cause exists if the affidavit in support of the warrant sets forth facts and circumstances sufficient to establish a reasonable inference that the defendant is probably involved in criminal activity and that evidence of the crime can be found at the place to be searched." *Id.* Accordingly, probable cause requires "a nexus between criminal activity and the item to

be seized, and also a nexus between the item to be seized and the place to be searched." *Id.*

A judge exercises judicial discretion in determining whether to issue a search warrant. *State v. Vickers*, 148 Wn.2d 91, 108, 59 P.3d 58 (2002). That decision "is reviewed for abuse of discretion." *Id.* A search warrant, once issued, is entitled to "a presumption of validity" and reviewing courts shall accord "great deference to the magistrate's determination of probable cause." *State v. Chenoweth*, 160 Wn.2d 454, 477, 158 P.3d 595 (20 07); *Vickers*, 148 Wn.2d at 108. As a result, "[d]oubts concerning the existence of probable cause are generally resolved in favor" of the validity of the search warrant. *Vickers*, 148 Wn.2d at 108-109; *Chenoweth*, 160 Wn.2d at 477.

1) The search warrant at issue was supported by probable cause because a nexus existed between the felony harassment and the evidence seized.

Any evidence that would be helpful in the prosecution of a crime has a sufficient nexus to that crime for the purposes of issuing a search warrant. *See Messerschmidt v. Millender*, --- U.S. ----, 132 S.Ct. 1235, 1247-49, --- L.Ed.2d --- (2012); *Warden, Md. Penitentiary v. Hayden*, 387

U.S. 294, 307, 87 S.Ct. 1642, 18 L.Ed.2d 782 (1967) (holding that the Fourth Amendment allows a search for evidence when there is "probable cause . . . to believe that the evidence sought will aid in a particular apprehension or conviction"). RCW 10.79.015 supports this proposition as it provides that "[a]ny . . . magistrate, when satisfied that there is reasonable cause, may . . . issue [a] search warrant in the following cases, to wit: . . . (3) *[t]o search for and seize any evidence material to the investigation or prosecution of . . . any felony*." (emphasis added); *see also* CrR 2.3 (a warrant may be issued "to search for and seize *any (1) evidence of a crime*; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) weapons or other things by means of which a crime has been committed or reasonably appears about to be committed. . . .") (emphasis added).

Consequently, search warrants, in addition to authorizing a search for direct evidence of the crime at issue, may be issued to search for evidence that may "help to establish motive," "support the bringing of additional, related charges," or "might prove helpful in impeaching [a defendant] or rebutting various defenses he could raise at trial." *Messerschmidt*, 132 S.Ct. at 1247-48. Moreover, the issuing magistrate

does not need "probable cause to believe evidence will conclusively establish a fact before permitting a search, but only probable cause [] to believe the evidence sought will aid in a particular . . . conviction." *Id.* at Fn. 7 (citation and quotation omitted).

Here, the issue is whether the guns and ammunition located at Mr. Juve's home were evidence, as described above, of the felony harassment for the purposes of issuing a search warrant.

a) The existence of the guns and ammunition, and Mr. Juve's possession of them, corroborated witnesses' statements regarding Mr. Juve's threats and was relevant to prove his identity as the maker of the threats.

ER 401 defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." As the trial court held below, there were multiple ways in which Mr. Juve's possession of guns and ammunition was relevant evidence of the crime being investigated. 1RP 12-14. First, as the court noted, Mr. Juve's possession of guns was corroborative of witnesses' statements regarding what Mr. Juve said to them. 1RP 13. The trial court was correct when it held that Mr. Juve's possession of guns and

ammunition was relevant evidence because the evidence of possession made it more likely that Mr. Juve cocked a gun over the phone, threatened to shoot a gun to prove he had it, claimed to have rifles, and made other similar threats as the witnesses alleged. 1RP 13. That these threats were actually made was necessary to prove the crime of felony harassment.

Moreover, Mr. Juve's possession of guns and ammunition was key evidence, especially, because at the time the warrant was issued there was no way to know for certain if Mr. Juve would disclaim making any threats, attack the credibility of the witnesses who heard his threats, or even testify at all. For example, without the seized evidence, Mr. Juve may have been able to claim on the stand, with unearned credibility, that a witness's testimony that he made threats about bringing guns into the credit union was not believable because he did not own any guns. Instead, Mr. Juve made a similar such claim and the State was able to appropriately impeach him.

Second, at the time the warrant was issued there was no way to be sure that there would not be identity issues. The State was required to prove, not only that threats were made, but that Mr. Juve was the person who made them. Thus, as the trial court held "the fact that somebody has a

gun that they can cock; the fact somebody has a gun that they could shoot, makes it more likely that they were the person who made the statements." 1RP 13. While Mr. Juve did not deny being the person whose conduct was in question, had he denied being the person involved, his possession of guns and ammunition could or would have been evidence used to help establish his identity as the speaker of the threats. As a result, the trial court was correct when it found a sufficient nexus existed between the evidence sought and the crime at issue to support the magistrate's issuance of the warrant.

b) The existence of the guns and ammunition, and Mr. Juve's possession of them was relevant to prove his statements were not idle talk but a "true threat."

In order for the State to prove a harassment charge it must prove that the speaker's threat was a "true threat." *See* RCW 9A.46.020; *see also State v. Kilburn*, 151 Wn.2d 36, 84 P.3d 1215 (2004). A "true threat" is defined as "a statement made in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted as a serious expression of intention to inflict bodily harm upon or to take the life of another person." *State v. Schaler*, 169 Wn.2d 274, 283, 236 P.3d 858 (2010). Accordingly, an objective standard is utilized,

focusing on the speaker, to determine whether a true threat has been made. *Kilburn*, 151 Wn.2d at 44. A true threat is not protected by the First Amendment even if the speaker never intends to carry out the threat, however, a threat said in jest, idle talk, or political argument does not constitute a true threat. *Id.* at 43-4. Distilled down, "[w]hether a statement is a true threat or a joke is determined in light of the entire context, and the relevant question is whether a reasonable person in the defendant's place would foresee that in context the listener would interpret the statement as a serious threat or a joke" *Id.* at 46.

In addition to the requirement that the State must prove that a true threat was made, it must also prove, pursuant to RCW 9A.46.020(1)(a), that the defendant knowingly made the threat. *Id.* at 48. Overall, this means that the statute requires "that the perpetrator knowingly threaten to [kill] by communicating directly or indirectly the intent to [kill]; the person threatened must find out about the threat although the perpetrator need not know nor should know that the threat will be communicated to the victim; and words or conduct of the perpetrator must place the person threatened in reasonable fear that the threat will be carried out." *State v. J.M.*, 144 Wn.2d 472, 482, 28 P.3d 720 (2001).

This Court recently found evidence of gun possession relevant to the determination of whether a threat was a true threat in *State v. Barnes*, 158 Wn.App. 602, 243 P.3d 165 (2010). There, the defendant entered a bank and became upset, stating "I feel like going and getting a gun and shooting everyone." *Barnes*, 158 Wn.App at 605. The defendant left the bank shortly thereafter and an employee called the police. *Id.* Hours later and about one-half mile from the bank, an officer saw the defendant exit an auto parts store and get into his (the defendant's) car. *Id.* at 606. The defendant was arrested for felony harassment and placed into the officer's car while the officer searched the defendant's vehicle. *Id.* Before entering the defendant's car, the office noticed a gun box in plain view and after entering the car found a handgun inside the box, a handful of bullets in the front console cup holder, a mask, and a t-shirt that read "dead or alive." *Id.*

This Court suppressed the evidence inside the car because it found the search unlawful, but allowed the State to present the gun box as evidence of the felony harassment. *Id.* at 608-10. After invoking ER

401[2], *Barnes* held that the fact that defendant "had access to a gun when he threatened to return and shoot everyone at the bank branch is evidence which could lead a reasonable person to infer his threat was genuine and that he had taken steps to carry it out. Accordingly, the gun case is relevant evidence properly offered to prove that [the defendant] made a 'true threat' as required to prove a violation of RCW 9A.46.020(1)(a)(i)." 158 Wn.App at 610.

Here, the factual similarities compel a similar legal analysis and holding.[3] Like in *Barnes*, the fact that Mr. Juve had access to guns and ammunition when he threatened to return and shoot everyone at the credit union is evidence which could lead a reasonable person to infer that when Mr. Juve made his threats he was genuine. That said, while the State doesn't have to prove that Mr. Juve actually intended to carry out the threat for it to be considered a true threat, evidence that Mr. Juve actually

[2] Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

[3] The facts that differentiate this case from *Barnes* are immaterial for the purposes of determining the admissibility of the gun evidence, e.g., that the defendant in *Barnes* had his weapon much closer to the scene and still shortly after the threats were made or the numerous times Mr. Juve mentioned his guns and made his threats. Instead, such differences would likely carry greater or lesser weight at trial when a fact-finder assessed whether each defendant made a true threat.

or may have intended to do so is strong circumstantial evidence that he did make a true threat. That is, a "reasonable person would foresee that the statement would be interpreted as a serious expression of intention . . . to take the life of another person." *Schaler*, 169 Wn.2d at 283. In addition, such evidence would persuasively rebut that Mr. Juve only made the threats as jokes, idle talk, or hyperbole. Moreover, the evidence of Mr. Juve's access to guns and ammunition would also be relevant to show that Mr. Juve "subjectively kn[e]w that he [wa]s communicating a threat." *Kilburn*, 151 Wn.2d at 48. Consequently, the evidence that Mr. Juve possessed guns and ammunition was relevant to proving that Mr. Juve made a true threat and as a result, the trial court was correct when it found a sufficient nexus existed between the evidence sought and the crime at issue to support the magistrate's issuance of the warrant.

2) The search warrant at issue was supported by probable cause because a nexus existed between the evidence to be seized and the place to be searched.

As mentioned above, probable cause requires "a nexus between the item to be seized and the place to be searched." *Thein*, 138 Wn.2d at 140. Such a nexus exists if the affidavit sets forth "facts and circumstances

sufficient to establish a reasonable inference . . . that evidence of the criminal activity can be found at the place to be searched." *State v. Maddox*, 152 Wn.2d 499, 505, 98 P.3d 1199 (2004). "The [issuing judge] is entitled to make reasonable inferences from the facts and circumstances set out in the affidavit" including "where evidence is likely to be kept, based on the nature of the evidence and the type of offense." *Id.*; *U.S. v. Angulo-Lopez*, 791 F.2d 1394, 1399 (9th Cir. 1986). Probable cause to believe that a man has committed a crime, however, "does not necessarily give rise to probable cause to search his home." *Thein*, 138 Wn.2d at 148.

The State has not found any published Washington cases addressing where firearms are often kept and for how long. Other jurisdictions have addressed the issue, however, and held that "[c]ourts have acknowledged that individuals who own guns keep them at their homes." *U.S. v. Smith*, 182 F.3d 473, 480 (6th Cir. 1999); *United States v. Steeves*, 525 F.2d 33, 38 (8th Cir. 1975) (concluding that "people who own pistols generally keep them at home or on their persons."); *Allen v. Indiana*, 798 N.E. 2d 490, 497-98 (Ind. Ct. App. 2003) (holding "that handguns and rifles are the type of property that a person reasonably could be expected to keep for at least a period of a month and a half."). Thus, "it

is pretty normal . . . for individuals to keep weapons in their homes, particularly hunting weapons, and weapons which may be kept for the safety of the family." *U.S. v. Rahn*, 511 F.2d 290, 293 (10th Cir. 1975) (holding that eighteen month old information that firearms could be found at a location was not stale, as it was reasonable to assume that firearms would be retained for a lengthy period of time).

Here, the warrant affidavit set forth facts and circumstances sufficient enough for the issuing magistrate to reasonably infer that Mr. Juve's guns and ammunition would be found at his home. The affidavit detailed a phone call Mr. Juve made to the IRS wherein he stated "that if he did not get what he wants he will go into the back [sic] to get his money" and "that he will begin shooting people in the bank." CP 13. Furthermore, the affidavit alleged that Mr. Juve told the IRS agent with whom he had been speaking that "he was armed with a rifle" and for her "to listen because he wanted her to hear the rifle." *Id.* The affidavit also alleged that when Mr. Juve was in the Red Canoe Credit Union he told a bank teller that he owned "a gun and that he has a plan to bring it into the credit union to shoot all the employees. He repeated that he was going to kill the employees at the credit union and that he has enough bullets to do

it." *Id.* 13-14. During that series of threats, Mr. Juve also informed the bank teller that he "cocked" his weapon earlier when he was speaking with someone on the phone. *Id.* at 14. Moreover, the affidavit stated that while police officers were searching the area for Mr. Juve, he had stopped into an AM/PM store and stated to two people there that he "was going to shoot up the Red Canoe credit union." *Id.* at 13.

The chronology of the events detailed in the affidavit combined with Mr. Juve's statements suggests that Mr. Juve had guns and ammunition at his home. He possessed a gun in his hands when making his original threatening call, he then went to the credit union, where he made it known that he owned guns and ammunition, and he threatened to return to the credit union to shoot and kill the employees, presumably after he retrieved the guns and ammunition that he owned. Based on the above facts and circumstances, common sense, and persuasive authority that individuals who own guns keep them at their homes for a lengthy period of time, a judge could reasonably infer from information supplied in the affidavit that Mr. Juve's guns and ammunition would be found at his home. Consequently, a nexus existed between the evidence to be seized and the place to be searched and the search warrant was properly issued.

D. CONCLUSION

For the reasons argued above, the trial court correctly concluded that probable cause existed to support the issue of search warrant to search Mr. Juve's home for evidence of his crimes.

Respectfully submitted this 9th day of April, 2012.

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APPENDIX A

Statutes and Rules

RCW 9A.46.020 -- Definition — Penalties.

(1) A person is guilty of harassment if:

(a) Without lawful authority, the person knowingly threatens:

(i) To cause bodily injury immediately or in the future to the person threatened or to any other person; or

(ii) To cause physical damage to the property of a person other than the actor; or

(iii) To subject the person threatened or any other person to physical confinement or restraint; or

(iv) Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and

(b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. "Words or conduct" includes, in addition to any other form of communication or conduct, the sending of an electronic communication.

(2)(a) Except as provided in (b) of this subsection, a person who harasses another is guilty of a gross misdemeanor.

(b) A person who harasses another is guilty of a class C felony if any of the following apply: (i) The person has previously been convicted in this or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a no-contact or no-harassment order; (ii) the person harasses another person under subsection (1)(a)(i) of this section by threatening to kill the person

threatened or any other person; (iii) the person harasses a criminal justice participant who is performing his or her official duties at the time the threat is made; or (iv) the person harasses a criminal justice participant because of an action taken or decision made by the criminal justice participant during the performance of his or her official duties. For the purposes of (b)(iii) and (iv) of this subsection, the fear from the threat must be a fear that a reasonable criminal justice participant would have under all the circumstances. Threatening words do not constitute harassment if it is apparent to the criminal justice participant that the person does not have the present and future ability to carry out the threat.

(3) Any criminal justice participant who is a target for threats or harassment prohibited under subsection (2)(b)(iii) or (iv) of this section, and any family members residing with him or her, shall be eligible for the address confidentiality program created under RCW 40.24.030.

(4) For purposes of this section, a criminal justice participant includes any (a) federal, state, or local law enforcement agency employee; (b) federal, state, or local prosecuting attorney or deputy prosecuting attorney; (c) staff member of any adult corrections institution or local adult detention facility; (d) staff member of any juvenile corrections institution or local juvenile detention facility; (e) community corrections officer, probation, or parole officer; (f) member of the indeterminate sentence review board; (g) advocate from a crime victim/witness program; or (h) defense attorney.

(5) The penalties provided in this section for harassment do not preclude the victim from seeking any other remedy otherwise available under law.

[2011 c 64 § 1; 2003 c 53 § 69; 1999 c 27 § 2; 1997 c 105 § 1; 1992 c 186 § 2; 1985 c 288 § 2.]

RCW 9.41.040 -- Unlawful possession of firearms — Ownership, possession by certain persons — Restoration of right to possess — Penalties.

(1)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any serious offense as defined in this chapter.

(b) Unlawful possession of a firearm in the first degree is a class B felony punishable according to chapter 9A.20 RCW.

(2)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the second degree, if the person does not qualify under subsection (1) of this section for the crime of unlawful possession of a firearm in the first degree and the person owns, has in his or her possession, or has in his or her control any firearm:

(i) After having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any felony not specifically listed as prohibiting firearm possession under subsection (1) of this section, or any of the following crimes when committed by one family or household member against another, committed on or after July 1, 1993: Assault in the fourth degree, coercion, stalking, reckless endangerment, criminal trespass in the first degree, or violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence (RCW 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

(ii) After having previously been involuntarily committed for mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of another jurisdiction, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.047;

(iii) If the person is under eighteen years of age, except as provided in RCW 9.41.042; and/or

(iv) If the person is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense as defined in RCW 9.41.010.

(b) Unlawful possession of a firearm in the second degree is a class C felony punishable according to chapter 9A.20 RCW.

(3) Notwithstanding RCW 9.41.047 or any other provisions of law, as used in this chapter, a person has been "convicted", whether in an adult court or adjudicated in a juvenile court, at such time as a plea of guilty has been accepted, or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing or disposition, post-trial or post-factfinding motions, and appeals. Conviction includes a dismissal entered after a period of probation, suspension or deferral of sentence, and also includes equivalent dispositions by courts in jurisdictions other than Washington state. A person shall not be precluded from possession of a firearm if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or the conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. Where no record of the court's disposition of the charges can be found, there shall be a rebuttable presumption that the person was not convicted of the charge.

(4)(a) Notwithstanding subsection (1) or (2) of this section, a person convicted or found not guilty by reason of insanity of an offense prohibiting the possession of a firearm under this section other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances under RCW 69.50.401 and 69.50.410, who received a probationary sentence under RCW 9.95.200, and who received a dismissal of the charge under RCW 9.95.240, shall not be precluded from possession of a firearm as a result of the conviction or finding of not guilty by reason of insanity. Notwithstanding any other provisions of this

section, if a person is prohibited from possession of a firearm under subsection (1) or (2) of this section and has not previously been convicted or found not guilty by reason of insanity of a sex offense prohibiting firearm ownership under subsection (1) or (2) of this section and/or any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, the individual may petition a court of record to have his or her right to possess a firearm restored:

(i) Under RCW 9.41.047; and/or

(ii)(A) If the conviction or finding of not guilty by reason of insanity was for a felony offense, after five or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525; or

(B) If the conviction or finding of not guilty by reason of insanity was for a nonfelony offense, after three or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525 and the individual has completed all conditions of the sentence.

(b) An individual may petition a court of record to have his or her right to possess a firearm restored under (a) of this subsection (4) only at:

(i) The court of record that ordered the petitioner's prohibition on possession of a firearm; or

(ii) The superior court in the county in which the petitioner resides.

(5) In addition to any other penalty provided for by law, if a person under the age of eighteen years is found by a court to have possessed a firearm in a vehicle in violation of subsection (1) or (2) of this section or to have committed an offense while armed with a firearm during which offense a motor vehicle served an integral function, the court shall notify the department of licensing within twenty-four hours and the person's privilege to drive shall be revoked under RCW 46.20.265.

(6) Nothing in chapter 129, Laws of 1995 shall ever be construed or interpreted as preventing an offender from being charged and subsequently convicted for the separate felony crimes of theft of a firearm or possession of a stolen firearm, or both, in addition to being charged and subsequently convicted under this section for unlawful possession of a firearm in the first or second degree. Notwithstanding any other law, if the offender is convicted under this section for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, then the offender shall serve consecutive sentences for each of the felony crimes of conviction listed in this subsection.

(7) Each firearm unlawfully possessed under this section shall be a separate offense.

[2011 c 193 § 1; 2009 c 293 § 1; 2005 c 453 § 1; 2003 c 53 § 26; 1997 c 338 § 47; 1996 c 295 § 2. Prior: 1995 c 129 § 16 (Initiative Measure No. 159); 1994 sp.s. c 7 § 402; prior: 1992 c 205 § 118; 1992 c 168 § 2; 1983 c 232 § 2; 1961 c 124 § 3; 1935 c 172 § 4; RRS § 2516-4.]

RCW 10.79.015 -- Other grounds for issuance of search warrant.

Any such magistrate, when satisfied that there is reasonable cause, may also, upon like complaint made on oath, issue search warrant in the following cases, to wit:

(1) To search for and seize any counterfeit or spurious coin, or forged instruments, or tools, machines or materials, prepared or provided for making either of them.

(2) To search for and seize any gaming apparatus used or kept, and to be used in any unlawful gaming house, or in any building, apartment or place, resorted to for the purpose of unlawful gaming.

(3) To search for and seize any evidence material to the investigation or prosecution of any homicide or any felony: PROVIDED, That if the evidence is sought to be secured from any radio or television station or from any regularly published newspaper, magazine or wire service, or from any employee of such station, wire service or publication, the evidence shall be secured only through a subpoena duces tecum unless: (a) There is probable cause to believe that the person or persons in possession of the evidence may be involved in the crime under investigation; or (b) there is probable cause to believe that the evidence sought to be seized will be destroyed or hidden if subpoena duces tecum procedures are followed. As used in this subsection, "person or persons" includes both natural and judicial persons.

(4) To search for and seize any instrument, apparatus or device used to obtain telephone or telegraph service in violation of RCW 9.26A.110 or 9.26A.115.

[2003 c 53 § 94; 1980 c 52 § 1; 1972 ex.s. c 75 § 2; 1969 c 83 § 1; 1949 c 86 § 1; Code 1881 § 986; 1873 p 216 § 154; 1854 p 101 § 2; Rem. Supp. 1949 § 2238. Formerly RCW 10.79.010, part.]

CrR 2.3 -- SEARCH AND SEIZURE

(a) Authority To Issue Warrant. A search warrant authorized by this rule may be issued by the court upon request of a peace officer or a prosecuting attorney.

(b) Property or Persons Which May Be Seized With a Warrant. A warrant may be issued under this rule to search for and seize any (1) evidence of a crime; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) weapons or other things by means of which a crime has been committed or reasonably appears about to be committed; or (4) person for whose arrest there is probable cause, or who is unlawfully restrained.

(c) Issuance and Contents. A search warrant may be issued only if the court determines there is probable cause for the issuance of a warrant. There must be an affidavit, a document as provided in RCW 9A.72.085 or any law amendatory thereto, or sworn testimony establishing the grounds for issuing the warrant. The sworn testimony may be an electronically recorded telephonic statement. The recording or a duplication of the recording shall be a part of the court record and shall be transcribed if requested by a party if there is a challenge to the validity of the warrant or if ordered by the court. The evidence in support of the finding of probable cause shall be preserved and shall be subject to constitutional limitations for such determinations and may be hearsay in whole or in part. If the court finds that probable cause for the issuance of a warrant exists, it shall
issue a warrant or direct an individual whom it authorizes for such purposeto affix the court's signature to a warrant identifying the property or person and naming or describing the person, place or thing to be searched. The court shall record a summary of any additional evidence on which it relies. The warrant shall be directed to any peace officer. It shall command the officer to search, within a specified period of time not to exceed 10 days, the person, place, or thing named for the property or person specified. It shall designate to whom it shall be returned. The warrant may be served at any time.

(d) Execution and Return With Inventory. The peace officer taking

property under the warrant shall give to the person from whom or from whose premises the property is taken a copy of the warrant and a receipt for the property taken. If no such person is present, the officer may post a copy of the search warrant and receipt. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person from whose possession or premises the property is taken, or in the presence of at least one person other than the officer. The court shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) Motion for Return of Property. A person aggrieved by an unlawful search and seizure may move the court for the return of the property on the ground that the property was illegally seized and that the person is lawfully entitled to possession thereof. If the motion is granted the property shall be returned. If a motion for return of property is made or comes on for hearing after an indictment or information is filed in the court in which the motion is pending, it shall be treated as a motion to suppress.

(f) Searches of Media.

(1) Scope. If an application for a search warrant is governed by RCW 10.79.015(3) or 42 U.S.C. sections 2000aa et seq., this section controls the procedure for obtaining the evidence.

(2) Subpoena Duces Tecum. Except as provided in subsection (3), if the court determines that the application satisfies the requirements for issuance of a warrant, as provided in section (c) of this rule, the court shall issue a subpoena duces tecum in accordance with CR 45(b).

(3) Warrant. If the court determines that the application satisfies the requirements for issuance of a warrant and that RCW 10.79.015(3) and 42 U.S.C. sections 2000aa et seq. permit issuance of a search warrant rather than a subpoena duces tecum, the court may issue a warrant.

CERTIFICATE OF SERVICE

Michelle Sasser, certifies that opposing counsel was served electronically via the Division II portal:

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on April 9th, 2012.

Michelle Sasser

Michelle Sasser

COWLITZ COUNTY PROSECUTOR

April 09, 2012 - 2:34 PM

Transmittal Letter

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Case Name: State of Washington v. Stanley Curtis Juve

Court of Appeals Case Number: 42369-3

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